

Applicant: SCHNEIDER
Appl. Number: 10/684,312

REMARKS

None of the claims have been amended herewith. The Examiner's remarks in the Office Action have been carefully considered and the following remarks are made as a complete response thereto.

REJECTIONS UNDER 35 USC 102(b)

On page 2 of the recent Action, claims 1-7 and 14-16 were rejected as being anticipated by Slattery (US 4,508,096). No further remarks were offered to support the rejection, that is, no indications as to the manner in which each of Applicant's claim elements are allegedly met by the teachings of Slattery. This interferes with Applicant's ability to clearly understand and effectively respond to the Remarks from the Office. As the rejection is best understood, however, Applicant respectfully traverses the rejection and contends that Slattery does not, in fact, fulfill or anticipate Applicant's recited claims.

In its current form, Applicant's independent claim 1 recites a "...plurality of panels forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels, the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating, the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and an overall shape of the frame."

Slattery does not teach or suggest that "a side of the frame comprises a variable configuration of panels" as recited by Applicant. The remarks in the Action do not account for how this recitation is allegedly met by Slattery. In contrast, note Applicant's FIGs 3-6, clearly depicting that a given side of the frame is subject to various configurations using a variable configuration of panels.

To construct a heating unit according to Slattery, two end plates 26, 28 are attached to a base 12 using fasteners 16, such as wing nuts. Then the side plates 22, 24 are set into place forming an enclosure in cooperation with the composite structure already formed by the base and side plates. The side plates and end plates alone do not significantly couple with one another to form a frame for suspending an item above a

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heat source. The Office is challenged to show that the plates 22, 24, 26 and 28, devoid of base 12 and any other means of coupling beyond what is taught in Slattery, form a 'frame' per se that can be erected and be capable of supporting or suspending items above a heat source. In accordance with Applicants teachings, the formation of a frame is desirable for facilitating assembly, without requiring a base member, and for allowing the frame, even while supporting food items thereon, to be lifted intact up and away from the heat source. This is useful, for example, for allowing repositioning of fuel materials without having to move items off of the grill. Applicant's approach also facilitates assembling the unit in free space or when a flat, hard surface is not readily available.

Consequently, Applicant respectfully submits that Slattery does not anticipate Applicant's independent claim 1 and that the Office has failed to demonstrate otherwise. As the remainder of claims 2-7 and 14-16 depend from claim 1, they are each allowable at least by virtue of their dependence from claim 1. Applicant further argues the patentability of claims 2 and 3 in their own right with respect to Slattery. Slattery does not teach or suggest that the panels are detachably coupled to one another, nor, as claim 3 specifies, that they are detachably coupled to one another substantially along their adjacent edges. In accordance with Slattery, the panels only come into proximity with one another, and that by virtue of the end panels being fixed in place to the base using fasteners. Slattery fails to show coupling among the panels and the formation of an erect frame as Applicant has claimed. Applicant respectfully requests reconsideration and withdrawal of the rejection of the claims as were based upon Slattery.

REJECTIONS UNDER 35 USC 103

On page 2 of the recent Action, claims 8-13 were rejected as being unpatentable over Slattery in view of Bach (US 6,439,225). Oddly, the remarks in the Action immediately follow with a reference to Hait, not mentioned in the present rejection but presumably referring to US 4,624,238 earlier made of record in the case. The remarks in the Action state here: "Hait is considered to disclose the claimed invention, as clearly anticipated under the rejection above, except for the claimed selective configuration."

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Applicant is unsure whether the Examiner is indeed relying upon Hait or Slattery to be combined with Bach or whether all three references are being relied upon in combination with one another.

If the mention of Hait is a typographical error and the Examiner intends to refer to a Slattery here, then Applicant notes that this is an admission that Slattery fails to meet limitations pertaining to selective configurability. Yet such limitations are recited in Applicant's independent claim 1. For example, Applicant's claim 1 presently recites "... wherein a side of the frame comprises a variable configuration of panels, the configuration being selected by a user of the device...", referring to the frame being 'selectively configured'. Therefore, if this statement in the Action is intended to apply to Slattery, then the rejections of claims 1-7 and 14-16 under 35 USC 102 mentioned earlier cannot be sustained and should be withdrawn.

Aside from this issue, Applicant addresses the remainder of the remarks pertaining to how Bach allegedly discloses the 'selective configured' aspect at column 8, lines 5-49. Applicant maintains, as argued in a previous response, that this passage of Bach describes the manner of folding the screened sides to permit their storage inside the unit when it is not in use and of unfolding the screens and setting them in place between the top and bottom sections of the unit in the context of a single, fixed while-in-use configuration. Moreover, the sides of the resulting enclosure formed by the screens of Bach do not provide for any variety of in-use configurations. In contrast, note that Applicant's independent claim 1, upon which claims 8-13 depend, recites that the frame "... comprises a variable configuration of panels, the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating..." Bach does not teach or fairly suggest this variety of in-use configurations and does not fulfill this attribute reflected in Applicant's claims. None of Bach, Slattery, or Hait contain any teaching, suggestion or motivation to be combined with one another in recognition of achieving the useful qualities of Applicant's claimed invention. Accordingly, the Office Action fails to establish *prima facie* obviousness based on a combination of these references. Especially with respect to dependent claims 8-11, the remarks in the Action fail to demonstrate how the references relied upon pertain in any

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way to employing a selectable quantity of panels, a selectable combination of panels or selective positioning of panels to form a given side of Applicant's frame.

Accordingly, claims 8-13 are allowable because the combination of references relied upon do not establish a *prima facie* case of obviousness. These references fail to teach or fairly suggest all of Applicant's limitations and they lack any teaching, suggestion or motivation to be combined with one another. Applicant respectfully requests reconsideration and withdrawal of this rejection of claims 8-13.

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CONCLUSION

Applicant respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided. Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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